

TN agent #0880089

BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE
FOR THE STATE OF TENNESSEE

TENNESSEE INSURANCE DIVISION,)	
Petitioner,)	
)	
vs.)	No. <u>07-055</u>
)	
JEFFREY B. LACKEY,)	
Respondent.)	

CONSENT ORDER

WHEREAS, Respondent, Jeffrey B. Lackey, hereby stipulates and agrees, subject to the approval of the Commissioner of Commerce and Insurance (hereinafter referred to as the "Commissioner") as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner's acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner.
2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action and penalties with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of this matter or any administrative proceedings.
3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the

facts or transactions herein addressed. Respondent further understands that the acts or omissions addressed in this Consent Order may be used by the Commissioner in denying any application for insurance producer license in which the Respondent may submit in the future.

4. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of the Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

FINDINGS OF FACT

5. The Tennessee Insurance Law, as amended, Tenn. Code Ann. § 56-1-101, *et seq.* (hereinafter referred to as the "Law"), places the responsibility for the administration of the Law on the Commissioner. The Insurance Division of the Department of Commerce and Insurance (hereinafter referred to as the "Division") is the lawful agent through which the Commissioner discharges this responsibility.

6. The Respondent, Jeffrey B. Lackey, (hereinafter referred to as the "Respondent"), is a citizen of Tennessee and resident of Kingsport, with his mailing address being 280 Alpine Trail, Kingsport, Tennessee 37663, and, at all times relevant to the events herein, has been licensed by the Division to sell insurance in this state as an agent producer, having obtained said license, numbered 880089, in 2002.

7. On or about November, 2004, Respondent sold an annuity plan (contract #523357) to Mary C. Allen, (hereinafter referred to as "Ms. Allen"), a resident of Bluff City, Tennessee. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Ms. Allen by Respondent.

8. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

9. The policy summary actually provided by Respondent reflected that the guaranteed minimum percentage rate was three and one quarter percent (3.25%) for the life of the contract.

10. In addition to the fraudulent information, Respondent did not inform Ms. Allen of the surrender charges associated with the annuity.

11. On or about February, 2005, Respondent sold an annuity plan (contract #544243) to Wayne S. Blevins, (hereinafter referred to as "Mr. Blevins"), a resident of Abingdon, Virginia. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Mr. Blevins by Respondent.

12. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

13. The policy summary actually provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract was thirteen and fifty five hundredths percent (13.55%).

14. On or about June 29, 2005, Respondent sold an annuity plan (contract #568723) to Mildred P. Farrow, (hereinafter referred to as "Ms. Farrow"), a resident of White Pine, Tennessee. The original page three (3) of the contract had been omitted from the contract that was provided to Ms. Farrow by Respondent.

15. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract

16. The terms contained in page three were not the terms represented to Ms. Farrow by Respondent at the time of the sale.

17. On or about February, 2005, Respondent sold an annuity plan (contract #544702) to Joenia D. Frady, (hereinafter referred to as "Ms. Frady") a resident of Kingsport, Tennessee. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Ms. Frady by Respondent.

18. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

19. The policy summary actually provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract was thirteen and fifty five hundredths percent (13.55%).

20. In addition to providing fraudulent documents Respondent also misrepresented to Ms. Frady that the term of the contract was ten (10) years rather than seventeen (17) years.

21. On or about February, 2005, Respondent sold an annuity plan (contract #544636) to A. Charles Gettig, (hereinafter referred to as "Mr. Gettig"), a resident of Murrells Inlet, South

Carolina. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Mr. Gettig by Respondent.

22. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

23. The policy summary actually provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract was thirteen and fifty five hundredths percent (13.55%).

24. On or about March, 2005, Respondent sold two (2) annuity plans (contract #552817 and 552819) to Edward C. Hall and Glenora T. Hall, (hereinafter referred to as "Mr. and Mrs. Hall"), residents of White Pine, Tennessee. On or about April 29, 2005, Respondent also sold another annuity plan (contract #560939) to Edward C. Hall. The original page three (3) of all three (3) of the contracts had been omitted and a fraudulent page three was provided to Mr. and Mrs. Hall by Respondent.

25. Page three of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three (3) would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

26. The fraudulent page three (3) (or contract specifications as they were called in these contracts) actually provided by Respondent reflected that the guaranteed minimum

percentage rate was three percent (3%) for the life of the contract and that there were no surrender charges after ten (10) years and stated incorrect surrender charges for the years one through ten (1-10).

27. Respondent also sent a letter to Mr. and Mrs. Hall dated March 25, 2005, confirming the terms of the contracts including the fact that the initial interest rate which was guaranteed for the first year would be thirteen and fifty five hundredths percent (13.55%) and that the minimum guaranteed interest rate for the life of the contract would be three percent (3%).

28. Further, Respondent sent a letter dated April 8, 2005 to Mr. Hall confirming that he would receive income on a three hundred fifty thousand dollar (\$350,000) deposit of thirty three thousand six hundred dollars (\$33,600) per year.

29. On or about March, 2005, Respondent sold an annuity plan (contract #550683) to Tommy D. Lee and Claudia W. Lee, (hereinafter referred to as "Mr. and Mrs. Lee"), residents of Jonesboro, Tennessee. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Mr. and Mrs. Lee by Respondent.

30. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three (3) would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

31. The policy summary provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract was thirteen and fifty five hundredths percent (13.55%).

32. Respondent also sent a letter dated March 14, 2005 to Mr. and Ms Lee in which he confirmed the expected terms of the contract. In this letter Respondent states that the guaranteed minimum percentage rate is three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract is thirteen and fifty five hundredths percent (13.55%).

33. On or about April, 2005, Respondent sold two (2) annuity plans (contract #558707 and 558714) to Garth Moze and Janet Moze, (hereinafter referred to as "Mr. and Mrs. Moze"), residents of Elizabethton, Tennessee. The original page three (3) of the contracts had been omitted and a fraudulent page three (3) was provided to Mr. and Mrs. Moze by Respondent.

34. Page three of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen (17) years.

35. The fraudulent page three (or contract specifications as they were called in these two (2) contracts) actually provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contracts and that there was no surrender charges after ten (10) years. The surrender charges for years one through ten (1-10) were also misrepresented at the time of the sale.

36. On or about February, 2005, Respondent sold an annuity plan (contract #546258) to Bernadine B. Sims, (hereinafter referred to as "Ms. Sims"), a resident of Morristown, Tennessee. The original page three (3) of the contract had been omitted and a fraudulent policy summary was provided to Ms. Sims by Respondent.

37. Page three (3) of the contract would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

44. Page three (3) of the contracts would have shown a guaranteed minimum percentage rate of two and one quarter percent (2.25%) for the life of the contract and surrender charges that would be applied if the contract was surrendered for cash value at any time over seventeen years (17) years. Page three would also have reflected an initial interest rate of three and one quarter percent (3.25%) which was guaranteed for the first year of the contract.

45. The policy summaries actually provided by Respondent reflected that the guaranteed minimum percentage rate was three percent (3%) for the life of the contract and that the guaranteed interest rate for the first year of the contract was thirteen and fifty eight hundredths percent (13.58%). Respondent also sent a letter to Mr. and Mrs. Briscoe confirming the terms of the contracts including the fact that the minimum guaranteed interest rate for the life of the contract would be three percent (3%) and setting forth erroneous surrender charge calculations.

46. On or about February 21, 2006, Respondent applied to Tennessee for a non-resident producer license with his home state identified as Kansas. This application was approved on February 27, 2006. He subsequently applied for a resident producer license on August 2, 2006, which was approved effective August 10, 2006. On both applications for producer licenses in Tennessee Respondent denied he ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct. On or about August 31, 2005, Respondent had been terminated by American Equity Investment Life Insurance Company hereinafter referred to as "AEIL") "for cause" as a result of six (6) of the altered contracts.

CONCLUSIONS OF LAW

47. Tenn. Code Ann. § 56-6-112(a)(5) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she

finds that one holding an insurance producer license has intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance.

48. The facts stated in Paragraphs 5-46, above, demonstrate that Respondent intentionally misrepresented the terms of actual or proposed insurance contracts or applications for insurance. On eleven (11) separate occasions, Respondent misrepresented terms of insurance contracts to the above named individuals purchasing insurance. ~~Such facts constitute grounds for an order revoking~~ Respondent's license under this part in violation of Tenn. Code Ann. §56-6-112(a)(5).

49. Tenn. Code Ann. § 56-6-112(a)(8) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding an insurance producer license has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere.

50. The facts stated in Paragraphs 5-46, above, demonstrate that Respondent used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere. On eleven (11) separate occasions Respondent used fraudulent, coercive, or dishonest practices to sell insurance to the above named individuals. Such facts constitute grounds for an order revoking Respondent's license under this part in violation of Tenn. Code Ann. § 56-6-112(a)(8).

51. Tenn. Code Ann. § 56-6-112(a)(1) states, in pertinent part, that the commissioner may place on probation, suspend, revoke, or refuse to issue or renew any license under this part if she finds that one holding an insurance producer license has provided incorrect, misleading, incomplete or materially untrue information in the license application.

52. The facts stated in Paragraphs 5-46, above, demonstrate that Respondent knew that his business relationship with AEIL was terminated due to alleged misconduct and yet he indicated on two (2) separate applications for Tennessee producer licenses that he had never had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct. Such facts constitute grounds for an order revoking Respondent's license under this part in violation of Tenn. Code Ann. §56-6-112(a)(1).

ORDER

NOW THEREFORE, on the basis of the foregoing, and the waiver of the Respondent of his rights to a hearing and appeal under Tennessee Insurance Law and Tennessee's Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101, *et seq.*, and the admission by the Respondent of the jurisdiction of the Commissioner, the Commissioner finds that the Respondent has consented to the entry of this Order and that the following Order is appropriate, and in the public interest.

IT IS ORDERED, pursuant to Tenn. Code Ann. § 56-6-112(a) of the Tennessee Insurance Law that:

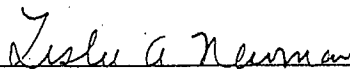
The insurance producer license, numbered number 880089 issued to Jeffrey B. Lackey, is hereby **REVOKED**.

This Consent Order is in the public interest and in the best interests of the parties, and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By his signature affixed below, Jeffrey B. Lackey, affirmatively states that he has freely agreed to the entry of this Consent Order, that he has been advised that he may consult legal counsel in this matter, and has had the opportunity to consult with legal counsel, that he waives his right to a hearing on the matters underlying this Consent Order and to any review of the Findings of

Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made by the Commissioner, the Division, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement set forth in this Consent Order, are binding upon them.

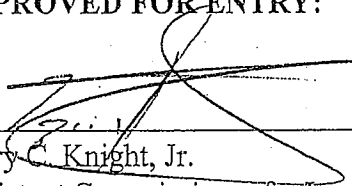
SO ORDERED.

Entered this the 17th day of October, 2007.

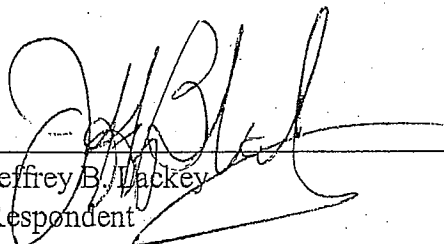


Leslie A. Newman, Commissioner
Department of Commerce and Insurance

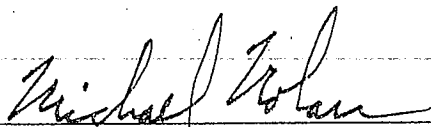
APPROVED FOR ENTRY:



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